

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA.

FAO (MVA) No.602 of 2003

Judgment Reserved on: 16.5.2007

Date of Decision: 13.6.2007

Kamla Devi and others Appellants

Versus

Bagat Ram Chauhan & Ors. Respondents.

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge

Whether approved for reporting? Yes

For the Appellants : Ms. Jyotsna Rewal Dua, Advocate.

**For respondent No.1: Mr. Pankaj Sharma, vice
Mr. Sandeep Kaushik, Advocate.**

For respondent No.2: Mr. Lalit Kumar Sharma, Advocate.

Kuldip Singh, J

The claimants are in appeal against award dated 7.10.2003 passed by learned Motor Accident Claims Tribunal-1, Sirmaur District at Nahan in MAC Petition No.16-MAC/2 of 2003, awarding Rs.4,31,000/- compensation along with interest at the rate of 9% per annum from the date of filing of the petition till payment.

The facts in brief are that Bishan Singh died in an accident on 15.11.2002 near village Halai involving Maruti Van No HP-18-5133 which was being driven rashly and negligently by Nutan Kumar near village Halai. The deceased was serving as Junior Basic Teacher in Govt. Primary School, Koti Dhaman and was drawing Rs.8,630/- per month salary. The deceased was 52 years of age. An FIR was registered at Police Station, Renukaji under Section 279, 337 and 304-A IPC. The claimants are widow, minor sons, daughters and mother of the

Whether reporters of Local Papers may be allowed to see the Judgment? Yes

deceased. The original petitioner No. 8, Tulsi Devi died but her legal representatives were already on record except Bahadur Singh who was brought on record. The respondent No.1 Bagat Ram Chauhan was the owner and respondent No.2 is the insurer of the vehicle. The claimants claimed Rs.12,00,000/- compensation along with interest at the rate of 12% per annum on account of death of Bishan Singh.

The respondent No.1 contested the petition by filing the reply and has admitted the accident. He has also admitted that deceased was travelling in the Van. It has been denied that Van was being driven rashly and negligently. According to respondent No.1 the amount claimed is excessive. He prayed for dismissal of the petition but also submitted that liability, if any is of the respondent No.2 since the vehicle was insured with respondent No.2. Respondent No.2 has filed reply and took preliminary objections of maintainability, deceased was unauthorized passenger in the Van and his risk was not covered under the policy. The vehicle was being driven in violation of the terms of the insurance policy. The amount claimed is excessive.

The learned Tribunal allowed the petition as noticed above. The petitioners-claimants are in appeal for enhancement of compensation.

I have heard the learned counsel for the parties and have also gone through the record.

The learned counsel for the petitioners-claimants has submitted that the Tribunal has awarded less compensation. The contribution made towards GPF from salary by the deceased has been wrongly excluded by the Tribunal while awarding compensation. The deceased was entitled to refund of GPF contribution and it is loss of estate to the petitioners. It has been urged that the amount awarded towards consortium love and affection is on the lower side. She has also submitted that the multiplier of seven allowed by the Tribunal is also less. On these grounds, the learned counsel for the petitioners prayed for enhancement of the compensation.

The learned counsel for the Insurance Company has submitted that the Tribunal has awarded just compensation. The petitioners are not entitled to enhancement of the compensation. The multiplier applied is correct.

The controversy involved in the appeal is very short which is with respect to the amount of compensation only. Ex.PW-4/A is the last pay drawn certificate of the deceased Bishan Singh. According to this certificate he was drawing Rs.8795/-, out of which he was contributing Rs..2000/- towards GPF and he was also paying Rs.30/- per month towards GIS. In all an amount of Rs.2030/- was being deducted from the salary of deceased. There was no other statutory deduction. The Tribunal has wrongly taken salary of the deceased at Rs. 6765/- instead of Rs.8795/-.The amount of Rs.2030/- which was being deducted from the salary of the deceased was to come back to the deceased had he not died in the accident. In **Smt. Shanta Devi and others v. Bhupinder Singh and others Latest HLJ 2006 (HP) 904**, it has been held that the contribution of deceased towards General Provident Funds is also required to be taken into count for assessment of compensation, though not on account of loss of dependency, yet as loss to the estate.

The amount of Rs.2030/- is nothing but loss of estate as far as petitioners are concerned. Therefore, the amount of Rs.2030/- is also liable to be taken into consideration for awarding the compensation to the petitioners-claimants. The petitioners were dependant upon the deceased.

As per certificate Ex.PW-4/A Rs.8795/- per month was the salary of the deceased. The family of deceased consisted of himself, wife six minor children, and mother who were dependant on him. According to Unit System the deceased would be spending about Rs.1465/- say Rs.1500/- PM on himself. Therefore = Rs. 7295/- (Rs.8796 - Rs.1500/-) per month was available to the petitioners. Thus annual dependency of the petitioners comes Rs.7295 x 12= Rs. 87,540/- . In **Smt. Arun Gupta and**

another vs. Sansar Chand and others, Latest HLJ 2006 (2) (HP) 917,

the deceased was 52 years of age and multiplier of seven has been applied. Therefore, the Tribunal has rightly applied multiplier of seven in the present case. The petitioners are therefore, entitled to compensation of $\text{Rs.}87540 \times 7 = \text{Rs.}6,12,780/-$. In addition to this the petitioners are also entitled to $\text{Rs.}5,000/-$ on account of funeral expenses and $\text{Rs.}20,000/-$ on account of loss of consortium love and affection etc. Thus, the petitioners are entitled to in all $\text{Rs.}6,37,780/-$ inclusive of interim award of $\text{Rs.}50,000/-$ under Section 140 of the M.V. Act which has already been paid to the petitioners.

On the compensation amount of $\text{Rs.}6,37,780/-$ the petitioner-claimants shall be entitled to 9% per annum interest from the date of institution of the petition till deposit/payment. The compensation amount along with interest shall be payable by respondents No.1 & 2 jointly and severally and since the van was insured with the Insurer Oriental Insurance Company, therefore, the Insurer shall pay/deposit the award amount. The compensation amount shall be paid along with proportionate interest as follows:-

1.	Kamla Devi (widow),	=	Rs.3,00,000/-
2.	Miss Vaneeta Devi,	=	Rs. 50,000/-
3.	Miss Kalpana	=	Rs. 50,000/-
4.	Pardeep Singh	=	Rs. 50,000/-
5.	Miss Prarena Kumari	=	Rs. 50,000/-
6.	Manvendar Singh	=	Rs. 50,000/-
7.	Dig Vijay	=	Rs.50,000/-
8.	Bahadur Singh Tomar	=	37,780/-

In view of above, this appeal is partly allowed. Impugned award is modified. The petitioners-claimants are held entitled to $\text{Rs.}6, 37,780/-$ as compensation as per their shares mentioned above on account of death of

Bishan Singh. The compensation amount shall be paid jointly and severally by the respondents and since Van was insured with the insurer, therefore, Oriental Insurance Company respondent No.3-Insurer shall pay/deposit the compensation amount. On the compensation amount the petitioners-claimants shall be entitled to 9% interest per annum from the date of filing of the petition till deposit/payment.

The compensation amount awarded above is inclusive of amount paid, determined, if any, under Section 140 of the Act. No order as to costs.

(Kuldip Singh)
Judge

June 13 , 2007
(sks)